of negligence. *Held,* the doctrine of *res ipsa loquitur* applies. *Riecke* v. *Anheuser-Busch Brewing Ass'n,* (Mo., 1921), 227 S. W. 631.

While the cases to which this doctrine is now applied are so numerous and diverse and the authorities so conflicting that to attempt a statement of definite limits is dangerous, yet certain essentials seem to be quite generally recognized. The thing causing the injury must be under the exclusive control of the defendant, the accident must be such as does not ordinarily happen if proper care is exercised, the plaintiff must have been rightfully in the place where the injury was received, and specific proof of the cause of the injury must be wanting. When applicable, the effect is that plaintiff may submit the issue of negligence to the jury upon proof of the injury only. SALMOND ON TORTS, [5th Ed.], 34. Plaintiff still has the burden of proof. *Sweeney* v. *Erving,* 228 U. S. 233. The doctrine was formerly applied only in cases where defendant was practically an insurer under a contractual relation with plaintiff, *Cosulich et al* v. *S. O. Co.,* 122 N. Y. 118, and it is still so limited in some courts, *Duerber M'f'g. Co.* v. *Dullnig,* (Tex., 1904), 83 S. W. 889, which case further restricts it to cases of falling objects. Of the cases wherein plaintiff's injury was caused by the explosion of a soft drink bottle, the best authority for the instant case is *Payne* v. *Rome Coca-Cola Bottling Co.,* 10 Ga. App. 762, which, indeed, goes much farther than the principal case, for there the offending bottle had passed through several hands and was in possession of a retailer. The court held that there being no evidence of negligence on the part of any of the intermediaries, the inference of negligence arose against the bottler. On similar facts, *Dail* v. *Taylor,* 151 N. C. 284, is exactly *contra* on the ground that the bottle was out of the control of the defendant. Also on similar facts *Glaser* v. *Seitz,* 35 Misc. 341, is *contra* on the ground that the bottle of seltzer water was sold for just what it was. Plaintiff failed to recover for the loss of his eye in *Stone* v. *Van Noy R. News Co.,* 153 Ky. 240, because the court considered the injury equally consistent with the theory of negligence or of no negligence, and that, therefore, it should not go to the jury. On similar facts the plaintiff also failed to recover in *Wheeler* v. *Laurel Bottling Works,* 111 Miss. 442. On principle, the strongest argument for the instant case would seem to rest on the fact that the bottler is in a position to know whether the product is dangerous, and that no one else who will handle it is in such position. For application of the doctrine of *res ipsa loquitur* to passenger-carrier cases, see 11 MICH. L. REV. 531. See also 16 MICH. L. REV. 205.

PHYSICIANS—DUTY TOWARD THOSE LIABLE TO EXPOSURE TO AN INFECTIOUS DISEASE.—Appellants sued the two physicians in attendance on their married son for not telling them that typhoid fever was an infectious disease and for advising them to take him home and put him among the younger children. As a result, both of the appellants and three of their minor children contracted typhoid fever, of which one of the children died. *Held,* although the complaint was insufficient here because of failure to allege facts showing the negligence to be the proximate cause of the injury, a duty rests on

a physician attending a patient with a contagious or infectious disease to exercise reasonable care to advise members of the family and others liable to be exposed of the nature of the disease and the danger of exposure. *Davis* v. *Rodman* (Ark., 1921), *227* S. W. 612.

A legal duty resting on the defendant to use care or skill is an essential element of actionable negligence. *Curtin* v. *Somerset,* 140 Pa. St. 70. The leading effort to formulate this duty found in *Heaven* v. *Pender,* L. R. 11 Q. B. D. 503 (1883), is broad in its language. The court there said: "Whenever one person is by circumstances placed in such a position with regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger." Although the courts have often quoted this rule, they have, in general, held that there are but two classes in which a legal duty arises: 1st, anyone in the exercise of his own legal rights is bound to use ordinary care not to injure others (*Colchester* v. *Brooke,* 7 Adolphus & Ellis N. S. 377); 2nd, anyone undertaking to do something for another, whether by express contract or otherwise, must act with due care. *Black* v. *N. Y., N. H., and Hartford Ry. Co.,* 193 Mass. 448. Although the principal case is within neither of these two well-established classes it involves a probably not unreasonable application of the general rule in holding that a physician owes a legal duty not only to a patient or to one who has employed him to care for someone else but to all members of the family and others who are liable to be exposed to the disease. The only precedent for this decision is the recently decided case of *Skillings* v. *Allen,* 143 Minn. 323, where it was held that a physician in telling plaintiff who had employed him to care for his child sick with scarlet fever that there would be no danger from contagion in taking the child home from the hospital while peeling, was guilty of negligence. Although the court talks about the contractual duty of the defendant to the parents who had employed him, the case is decided on the grounds of tort liability.

PUBLIC UTILITIES—RATES—POWER TO CONTRACT UNDER GRANT OF POWER TO FIX RATES.—Certain Iowa cities passed ordinances conferring on appellants franchises to use the streets for twenty-five, (in one case twenty,) years on condition that they should charge specified maximum rates. Appellant companies sought injunctions to restrain these rates, which for the purposes of the suits are admitted to be confiscatory. The District Court held the rates fixed depended on contracts, which the municipalities had power to make, and decreed enforcement of the ordinance rates. Upon appeal, *held,* that under the Iowa statutes there was no such power to fix contract rates. *Southern Iowa Electric Co.* v. *Chariton,* U. S. Sup. Ct., April 11, 1921.

These cases carry a step further the development of the law of rate fixing considered in 19 MICH. L. REV. 547, and other notes there referred to.